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CHARLES ELMORE CROPLEY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 632

JESSE CANTWELL, NEWTON CANTWELL AND RUSSELL CANTWELL,

Appellants,

vs.

THE STATE OF CONNECTICUT

APPEAL FROM THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

STATEMENT AS TO JURISDICTION

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STATE OF CONNECTICUT,

Respondent

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JURISDICTIONAL STATEMENT

Statute Sustaining Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code [28 USCA 344 (a)].

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in

any case which under prior statute could be received as a matter of right on writ of error.

Connecticut Statute Drawn in Question

The statute, the constitutionality and validity of which as construed and applied to appellants is here drawn in question, is Section 6294 of Connecticut General Statutes, Revision of 1930 (pages 1935, 1936), as amended by Section 860d of the Connecticut Public Acts 1937 (page 490), and which statute reads as follows:

> "No person shall solicit money, services, subscriptions or any valuable thing for any alleged religious, charitable or philanthropic cause, from other than a member of the organization for whose benefit such person is soliciting or within the county in which such person or organization is located unless such cause shall have been approved by the secretary of the public welfare council. Upon application of any person in behalf of such cause, the secretary shall determine whether such cause is a religious one or is a bona fide object of charity or philanthropy and conforms to reasonable standards of efficiency and integrity, and, if he shall so find, shall approve the same and issue to the authority in charge a certificate to that effect. Such certificate may be revoked at any time. Any person violating any provision of this section shall be fined not more than one hundred dollars or imprisoned not more than thirty days or both."

The Connecticut Supreme Court of Errors and the courts below held that the statute was not unconstitutional and that it did not abridge freedom of speech and press and freedom to worship Almighty God, in violation of the Fourteenth Amendment to the United States Constitution. Accordingly, that court sustained the statute's application to appellants' acts and decided in favor of validity of the statute and held it to be constitutional as applied to appellants.

Timeliness

The judgment of the Connecticut Supreme Court of Errors was entered on June 26, 1939 (Record p. 99). The opinion of that court was delivered on the same date and appears in the Record, p. 93 et seq. Notice in writing of appellants' intention to present motion for reargument was duly filed. On September 12, 1939 appellants duly and timely filed their motion for reargument (R. pp. 100-101). The motion for reargument was overruled and denied October 13, 1939 (R. p. 101). Thereby the judgment of the Connecticut Supreme Court of Errors as rendered and entered on June 26, 1939 became final as against appellants on October 13, 1939. The petition for appeal is duly filed and presented within ninety (90) days from such date to this Court and is therefore timely.

Statement of Nature of Case

Appellants, a father (Newton Cantwell) and his two minor sons (Jesse and Russell) aged sixteen and eighteen years, are Jehovah's witnesses. Each bore credentials attesting that the Watch Tower Bible and Tract Society was represented by them and that each of them is an ordained minister of Almighty God to preach the gospel of His Kingdom under Christ Jesus. Each was equipped with a bag containing books and pamphlets in several different languages, a portable phonograph, and a set of disk records, which records when played introduced and described the literature containing explanations of the purposes and prophecies of Almighty God written in the Bible. The way appellants preached the gospel of God's kingdom was to go singly from house to house, tendering to each householder opportunity to hear the playing of a record. Thereupon the preacher would invite the householder to receive one or more of the books or pamphlets and to contribute a small

sum to aid in printing and distributing more like literature; and whenever a householder was not in position to contribute, a pamphlet was left, or a book, on condition that it would be read.

On April 26, 1938, appellants were preaching in this manner on Cassius Street in New Haven, that being a thickly populated area where, according to the court below, about ninety per cent of the residents are Roman Catholics (R. p. 94). The above facts were found by the trial court (R. pp. 22-25). The method of introducing the prospect to the books was by phonograph record entitled "Enemies", which was played in court and every word of which disk-record appears of record (R. p. 43-45). Although the Catholic Church was not mentioned in that phonographic record, the Supreme Court of Errors held that its presentation was an attack on the Catholic Church (R. p. 94).

By informations, each containing five counts, appellants severally were charged with violating, among other things, Section 6294 of Connecticut General Statutes, as amended by Section 860d of the 1937 Supplement quoted above (under "Connecticut Statute Drawn in Question" (and in the footnote of the opinion of the Supreme Court of Errors. (See Appendix A.) This offense was charged in the third count. Under the fifth count the State contended that the act of presenting this literature containing subject matter which shocked the religious susceptibilities of the complaining witnesses constituted a breach of the peace or was conduct inciting a breach of the peace (R. p. 1-12).

Demurrers to all five counts were filed by appellants and were overruled as to the third and fifth counts and sustained as to all other counts (R. pp. 15-16). The case was tried to the court without a jury and after hearing evidence, on September 23, 1938, all of the appellants, who were jointly tried by agreement, were convicted of violating the third and fifth counts and fined five ($5.00) dollars on each of said

counts. Costs were taxed against Newton Cantwell, $55.80; and $30.07 costs against each of the other two appellants. All were ordered to stand committed until judgment should be complied with (R. pp. 17-19).

On October 20, 1938, appellants by proper instrument duly and timely appealed from the convictions to the Supreme Court of Errors (R. p. 19). It was stipulated that the cases on appeal would be consolidated and reviewed on the one record (R. p. 20).

Substantial *Federal questions* attacking the validity of the statutes were raised in the trial court. They were first raised by demurrer to the third and fifth counts of the informations, on the grounds that Sections 6194, 6294, 6066 and 6244 of Connecticut Statutes are invalid in that each of said statutes unreasonably restricts and denies freedom of speech, freedom of press and freedom to worship Almighty God, as to appellants. (See points 3, 4, 5 and 6 of demurrer, Record pp. 13-14.) These points as to said statutes were overruled by the court. (See Memorandum on Demurrer, Record pp. 15-16.) As grounds for moving for judgment in their behalf appellants, at conclusion of the evidence, made the following claims of law:

That Section 6294 of Connecticut General Statutes was contrary to Article 1, Sections 3, 5 and 6 of the Connecticut Constitution and to the "due process" clause of the Fourteenth Amendment to the United States Constitution, in that as applied it unduly restricts and denies freedom of speech, freedom of press and freedom to worship Almighty God (R. pp. 29-30).

These points of law were overruled by the trial court. (See Record p. 26, Section II, paragraphs 1, 2 and 3.)

These *Federal questions* were carried forward and urged in the assignments of error which were presented to the Supreme Court of Errors in the time and manner required

by statute. (See Record pp. 30-31, Assignment of Errors, paragraph 8.)

The Supreme Court of Errors passed upon each of said *Federal questions* or assignments attacking the validity of the statutes as applied to appellants, and held the statutes valid and constitutional as so applied and found that they did not violate the Fourteenth Amendment to the United States Constitution. (See Opinion, Appendix A.) That court said:

> "The further contention that this statute, as applied to the acts of the defendants, is invalid under Secs. 3, 5 and 6 of Article First of the Connecticut Constitution and the due process clause of the Fourteenth Amendment of the Constitution of the United States, appears to be based upon a claim that the statute, as applied to the defendants and their acts, abridges or denies freedom of religious profession and worship and liberty of speech and of the press. * * * It is such solicitation which brings the defendants within the statute, not their other and apparently predominant activities in the dissemination of literature. For this reason there is not, as claimed, the constitutional objection which was found as to the application to members of this same organization of ordinances involved in *Lovell* v. *City of Griffin*, 303 U. S. 444, * * * and *Cincinnati* v. *Mosier*, 14 Ohio Opinions 134 * * * The conviction of violation of Sec. 6294 is supported by the facts found and is not invalid on constitutional grounds."

The Supreme Court of Errors set aside the conviction of Russell Cantwell and Newton Cantwell under the fifth count charging 'inciting a breach of the peace' but sustained the conviction of Jesse Cantwell under such count five which assessed a fine and costs.

The Supreme Court of Errors sustained the conviction of each of the three defendants under the third count charg-

ing a violation of Section 6294 of the General Statutes as amended by Section 860d of the 1937 Supplement, and affirmed the judgment of the trial court assessing a fine and costs as to each defendant. (R. p. 99.)

The only ground relied upon by the Supreme Court of Errors and the trial court for convicting the defendant Jesse Cantwell under the fifth count was, as stated by the Supreme Court of Errors, to wit:

> "Jesse Cantwell stopped John Canley and John Cafferty, both of whom are Catholics, and receiving permission played the phonograph record 'Enemies' which attacked that religion and church. On hearing it Ganley felt like hitting Cantwell and told him to take his bag and victrola and be on his way. If he had remained, he might have received physical violence. Cafferty's mental reaction was to put Jesse off the street and he warned him that he had better get off before something happened to him. * * * It is apparent from the facts found that the playing for audition by loyal Catholics of a record violently attacking their religion and church could well be found to constitute the offense charged, and they warrant finding the defendant Jesse Cantwell guilty. * * *"

There was no evidence that Jesse Cantwell knew in advance that these men were Catholics. There is no evidence that he talked loudly or boistrously or otherwise disturbed the peace. There was no disturbance of the 'public peace'. The trial court found, concerning his conduct, as follows:

> "21. On the same day Jesse Cantwell stopped John Ganley and John Cafferty on Cassius Street and receiving permission played the record 'Enemies'. After playing the record he showed them the book 'Enemies', stating that if they wanted to contribute toward the organization they could, or if they were firm believers, they could have the book for nothing.

"27. There was no evidence that the appellants became offensive or entered into any arguments upon refusal to contribute for the purchase of the books." (R. p. 25.)

In the motion for reargument the appellants each complained of the judgment of the Supreme Court of Errors for and on account of each of the grounds set forth in the assignments of error contained in the petition for appeal to the United States Supreme Court herein. (R. pp. 100-101.)

Grounds and Decisions Showing Substantial Federal Questions

Appellants' contentions herein are that the statute drawn in question, as applied to their activities involved herein, is void in that it

A) abridges the freedom to worship Almighty God and freedom of conscience secured to all persons by the "due process" clause of the Fourteenth Amendment to the Federal Constitution; and

B) abridges the freedom of speech adn of the press secured to all persons by the "due process" clause of the Fourteenth Amendment to the Federal Constitution.

A

The statute in question, the validity of which is sustained by the state court, as applied to appellants deprives them of their right of freedom to worship Almighty God and freedom of conscience, in contravention of the "due process" clause of the Fourteenth Amendment to the Federal Constitution.

"Liberty" as safeguarded for all persons by the Fourteenth Amendment against abridgment by a state includes not only the right of one to be free from physical restraint but also fully justifies his free exercise and enjoyment of

rights which the Congress as well as a state or any lesser governing unit of this land's free men is *constitutionally estopped from infringing.*

Watson v. *Jones,* 80 U. S. 679;
Reynolds v. *United States,* 98 U. S. 145;
Davis v. *Beason,* 133 U. S. 333, 342;
Holy Trinity Church v. *United States,* 143 U. S. 457, 459;
Allgeyer v. *Louisiana,* 165 U. S. 578, 589;
Idaho v. *Morris,* 155 Pac. 296;
Meyer v. *Nebraska,* 262 U. S. 390;
U. S. v. *Macintosh,* 283 U. S. 605, 634;
Hamilton v. *Regents,* 293 U. S. 245;
Thomas v. *City of Atlanta,* 59 Ga. App. 520, 1 S. E. 2d 592;
Weiss v. *District Board et al.,* 76 Wis. 177, 212;
Cincinnati v. *Mosier,* 61 Ohio App. 81;
Gobitis v. *Minersville School Dist. et al.,* 21 F. Supp. 581; 24 F. Supp. 271; affirmed November 10, 1039, C. C. A. (3).

The holding of the court below that

> "* * * There is no error as to the conviction of all the defendants on the third count"
> "* * * that this statute, as applied to the acts of the defendants, is invalid under * * * the due process clause of the Fourteenth Amendment * * * [and] abridges or denies freedom of religious profession and worship"

in itself raises a substantial federal question affecting appellants' constitutionally safeguarded liberty to worship Almighty God and freedom of conscience.

The Petition for Appeal herein ought properly to be granted by this Court because the essential privilege of every person who resides within the jurisdiction of the United States of America to worship Almighty God in ac-

cordance with His written law and the conscientious understanding held by the person concerning the Maker's requirements prescribed in that law, has been wrongfully and unlawfully denied to appellants through the judgment of the courts below.

Almighty God is formally called upon continually in the high courts of this land, including this Court.

From the foundation of the United States of America it has been recognized as a "Christian nation"; which means that the inhabitants try to follow the lead of Christ Jesus, the Son of the Almighty One whose name alone is Jehovah.

The Lord Jesus Christ always obeys the law of His Father.

All followers of Christ Jesus are duty-bound likewise to obey the law of Jehovah.—See Psalm 40:8; 1 Peter 2:21; Deuteronomy 11:27.

Each of the appellants is an ordained minister of Almighty God to preach the gospel of God's kingdom under Christ Jesus; each is wholly consecrated and devoted to the service of Almighty God under the leadership of His Son. For any of the appellants willingly to disobey the commandments of Almighty God would mean destruction for such disobedient one as he sincerely and conscientiously believes.

To worship Almighty God means to obey His commandments, and therefore to serve Him as commanded by His law. The words of Christ Jesus are, "Thou shalt worship the Lord thy God, and him only shalt thou serve." (Matthew 4:10) "God is a Spirit; and they that worship him must worship him in spirit and in truth."—John 4:24.

"Worship" according to Black's Law Dictionary is the offering of honor and adoration to the Divine Being.

In *Weiss* v. *District Board et al.*, 76 Wis. 177 (212), the court says that worship includes making Jehovah the object of supreme affection and *rendering to Him supreme obedience*.

At the time of their arrest each of the appellants was actively worshiping Almighty God in spirit and in truth. Each of them was conducting himself strictly in obedience to God's commandments and in harmony with their conscientious belief concerning their Maker's requirements of them. Following are some of the commandments of Almighty God which the follower of Christ Jesus must obey:

"Ye are my witnesses, saith the Lord, that I am God."—Isaiah 43:10-12.

"The Spirit of the Lord God is upon me; because the Lord hath anointed me to preach good tidings unto the meek; he hath sent me to bind up the broken-hearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; to proclaim the acceptable year of the Lord, and the day of vengeance of our God; to comfort all that mourn."—Isaiah 61:1, 2.

These texts apply to all followers of Christ Jesus.

To all such also the following commandments by the Lord are mandatory:

"This gospel of the kingdom shall be preached in all the world for a witness unto all nations; and then shall the end come." (Matthew 24:14) "Go ye into all the world, and preach the gospel to every creature."—Mark 16:15.

For the benefit of all upright persons, and with all good conscience, appellants were obeying God's commandments by presenting to the people at their respective homes the message of God's Word, tendering such message in printed and phonographic form and inviting householders to read and/or hear the same quietly in their own homes. If any thus approached declined to hear, appellants quietly and promptly passed on. In no way were they violating the law of morality or of property, nor did they act so as to infringe on personal rights, nor were their acts inimical to the safety of the state.

In going from house to house with the gospel message and thus worshiping Almighty God according to His written law and appellants' conscientious understanding of its mandate to them they were following exactly the example set by Jesus Christ and His apostles. Concerning Him it is written: "He went round about the villages, teaching." (Mark 6:6) "He went round about the villages and every city, preaching and showing the glad tidings of the kingdom of God; and the twelve were with him."—Luke 8:1.

Preaching from house to house was the method Jesus told His apostles to use. "And, as ye go, preach, saying, The kingdom of heaven is at hand. And when ye come into a house, salute it. And if the house be worthy, let your peace come upon it; but if it be not worthy, let your peace return to you. And whosoever shall not receive you, nor hear your words, when ye depart out of that house or city, shake off the dust of your feet."—Matthew 10:7, 12-14.

The apostles taught publicly by going "from house to house".—See Acts 20:20.

Thus also appellants were worshiping Almighty God, Jehovah, according to the God-given commandment and in conformity with the dictates of their conscience, and were so doing within the bounds of the State of Connecticut, the Constitution of which state secures to every person that right against abridgment by any.

It is not within the power or authority of the State of Connecticut, or of any municipality thereof, by legislative or other means to abridge any person's right freely, conscientiously and exclusively to obey Almighty God.

Human creatures or human powers cannot set aside the Almighty Creator's law nor prevent any creature's conscientious and exclusive obedience to the law of Almighty God.

"No external authority is to place itself between the finite being and the Infinite when the former is seeking to render the homage that is due, and in a mode which commends itself to his conscience and judgment as being suitable for him to render, and acceptable to its object."

Cooley, Constitutional Limitations, 8th ed., page 968.

Supreme

Almighty God Jehovah is supreme.

All who live must depend upon Him and obey Him. He is "the fountain of life". (Psalm 36:9) One who would live must obey God's law. (John 17:3) "The law of the Lord is perfect, * * * The statutes of the Lord are right, * * * the commandment of the Lord is pure."—Psalm 19:7, 8.

When in ancient times the apostles of Jesus Christ were haled into court, charged with preaching the gospel from door to door contrary to whims of certain governing officers, the accused answered: "We ought to obey God rather than men." (See Acts 5:17-42) According to Holy Writ, those officers then "commanded that they should not speak in the name of Jesus, and let them go". The disciples positively refused, however, to heed that command of men. Instead, they deliberately chose to resume acting in obedience to the command of God; and hence we read that "*daily* in the temple, and in *every house*, they *ceased not* to teach and preach Jesus Christ." (Acts 5:40-42) That same rule of the Almighty God every true follower of Jesus Christ boldly and joyfully obeys today.

Misuse of legislative devices to prohibit or subjugate to human control any activity such as that performed by appellants in conscientious obedience to the Creator's written mandates can be properly seen only as an attempt to 'frame mischief by law'.—Psalm 94:20.

Well spoken words are Mr. Justice Brandeis' as to efforts of states to deprive individuals of constitutionally secured rights such as are here in jeopardy:

> "The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning, but without understanding."
>
> *Olmstead* v. *United States*, 277 U. S. 479. Dissenting opinion.)

By the foregoing it conclusively appears that there was clearly raised and presented the question of freedom to worship Almighty God, secured by the Federal Constitution against abridgment and in this case abridged by application of a state statute; and therefore this Court has jurisdiction on that ground.

B

The statute in question, the validity of which is sustained by the state court, as applied to appellants abridges the rights of freedom of speech and freedom of press and is therefore repugnant to the "due process" clause of the Fourteenth Amendment to the Federal Constitution.

Here is presented a question of utmost gravity and importance that goes to the core of the unalienable right of every inhabitant of this "land of liberty" to impart and to acquire information affecting his associates' or his own common interests.

The judgment of the court below held that the statute:

> "* * * does not apply, and is not sought to be applied in this case, to the dissemination, either by sale or free distribution, of printed matter * * * For this reason there is not, as claimed, the constitutional objection which was found as to the application to members of this same organization of ordinances involved in Lovell *v.* City of Griffin, 303 U. S. 444, * * * and

Cincinnati *v.* Mosier, 14 Ohio Opinions 134, the first of which prohibited the distribution of literature of any kind, whether delivered free or sold, without a permit from the city manager, and the second required a license for peddlers selling goods carried by hand. The conviction of violation of Sec. 6294 is supported by the facts found and is not invalid on constitutional grounds."

Thus, undeniably, a substantial federal question is squarely introduced.

The statute here involved is not a valid exercise of police power as applied to appellants. Holding contrariwise, the court below has stumbled in its attempt to perform its 'delicate and difficult task of weighing the circumstances and appraising the substantiality of the reasons advanced in support of the regulation' by means of said statute of appellants' free exercise and enjoyment of constitutionally secured *Federal-citizen* rights.

Schneider v. *Town of Irvington*, — U. S. — (No. 11, October Term 1939, decided November 22, 1939).
Hague v. *C. I. O. et al.*, 306 U. S. 624.
Lovell v. *City of Griffin*, 303 U. S. 444.
Herndon v. *Lowry*, 301 U. S. 242.
Grosjean v. *American Press Co.*, 297 U. S. 242.
Near v. *Minnesota*, 283 U. S. 697, 707.
Gitlow v. *New York*, 268 U. S. 652, 666.

The judgment of the court below that

"The conviction of violation of Sec. 6294 * * * is not invalid on constitutional grounds"[4]

for the reason that

"the purpose of the statute is to protect the public against imposition in the matter of solicitation of funds purportedly for religious, charitable, or philanthropic causes"

and that

> "It is such solicitation which brings the defendants within the statute, not their other and apparently predominant activities in the dissemination of literature."

constitutes, obviously and undisputably, judicial condonement of unconstitutional infringement of inalienable fundamental rights lawfully exercised by appellants, and which abridgement, under color of legislative mandate, the courts below "should have been astute to examine, weigh and appraise" with due regard for both the definitive rulings of this Court and the substantiality of the reasons advanced in support of the regulation (by means of said statute) of appellants' exercise of their rights constitutionally protected against invasion by a state.

Schneider v. *Town of Irvington, supra,* and cases therein cited.

The state court's holding in favor of validity of the statute as applied to appellants' activities which that court in its opinion attempts to severalize is clearly questionable as effecting abridgement of rights protected under the "due process" and "equal protection" clauses of the Fourteenth Amendment.

Yick Wo v. *Hopkins*, 118 U. S. 356.
State of Washington v. *Roberge*, 278 U. S. 116.
Bent v. *The State of West Virginia*, 129 U. S. 114.

Solely because the substance of the printed information disseminated is either novel to some minds or apt to be offensive or even to shock their religious susceptibilities is not a sufficient or substantial ground for invoking police power to deprive the distributor of his right of freedom of press and speech. None of the justifications for denial of this right exist in the present case.

Near v. *Minnesota, supra.*

In the case of *Dearborn Publishing Co.* v. *Fitzgerald*, 271.F. 479, it was held that the fact that the message was offensive to others or might incite them to commit acts of violence was no ground for denying the constitutional right. In that case the court said:

> "If it be assumed that the article might tend to excite others to breaches of the peace the reply is plain. It is the duty of all officials charged with preserving order and peace to suppress firmly and promptly all persons guilty of disturbing it, and *not forbid* innocent persons to exercise their lawful and equal rights. * * * If defendants' actions were sustained, the constitutional liberty of every citizen freely to speak, write and publish his sentiments on all subjects, being responsible only for abuse of that right, would be placed at the mercy of every public official who for the moment was clothed with authority to preserve the public peace and the right to a free press thus destroyed * * *"

In the foregoing opinion the court quotes from *Epoch P. Co.* v. *Davis*, 19 Ohio (NP) (NS) 465, as follows:

> "Will the exhibition of this photoplay have a tendency to provoke a breach of the peace? Certainly so far as law abiding citizens are concerned such a tendency does not exist and cannot be seen. * * * To admit that this photoplay tends to provoke a breach of the peace is to confess that people of the African descent are not law abiding citizens. This I am not willing to admit because it would be uncalled for slander upon these people."

In *United States* v. *Schwimmer*, 279 U. S. 644, 654, Mr. Justice Holmes concerning this constitutional right said:

> "* * * If there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought—not free thought for those who agree with us but freedom for the thought we hate."

In two recent opinions this Court has held that legislation similar to the Connecticut statute here assailed and as applied to Jehovah's Witnesses elsewhere acting in like manner as did appellants herein was unconstitutional and void as depriving Jehovah's Witnesses and persons similarly situated of rights constitutionally secured with respect to freedom of speech and press.

Schneider v. *Town of Irvington, supra;*
Lovell v. *City of Griffin, supra.*

This Court's opinion in the *Schneider* case, *supra,* had not been delivered at the time that the Connecticut Supreme Court of Errors ruled upon the case of appellants herein, but that court attempted to distinguish the *Lovell* case, *supra,* on the ground that appellants' acceptance of money contributions when delivering literature from house to house brought them within the statute in question and that said statute, as applied to them, was not invalid as being repugnant to the Fourteenth Amendment to the Federal Constitution.

In other words, the Connecticut court in the last resort in all causes held that acceptance of money contributions by one while engaging in *press activity* removes such a person from protection constitutionally secured. That court held that such was the law as applied to appellants even though acceptance by them of contributions was purely incidental to the principal and more important branch of their activity, namely, dissemination of Bible truths in printed and/or otherwise recorded form. That court held that the main work of appellants was distribution of literature and that the taking of contributions was an incidental part of that work.

The statute here drawn in question is very similar to the ordinance involved in the *Schneider* case, supra, which as

applied this Court held unconstitutional. That ordinance provided:

> "No person except as in this ordinance provided shall canvass, solicit, distribute circulars, or other matter, or call from house to house in the Town of Irvington without first having reported to and received a written permit from the Chief of Police or the officer in charge of Police Headquarters."

Said ordinance further required that (as briefed by this Court),

> 'an applicant must undergo a burdensome and inquisitorial examination, including photographing and fingerprinting, and that the permit-issuing officer shall refuse a permit in all cases where the application, or further investigation made at the officer's discretion, shows that the applicant is not of good character or is convassing for a project not free from fraud; and violation is punishable by fine or imprisonment.'

Striking indeed, as to similarity, are both the aim and the principal elements of that ordinance and of the statute here in question. Concerning that type of legislation and rights *exercised* by Jehovah's witnesses as exemplified in conduct of petitioner in the *Schneider* case, ringing declarations of this Court's opinion in that case are noteworthy. On behalf of appellants herein attention is kindly directed to some of those declarations appearing in *red underlineation* in Appendix B hereof.

This Court's holding in the *Schneider* case, supra, is a controlling mandate as to rights of appellants herein and completely secures jurisdiction of this Court as to their contentions herein and vividly shows the invalidity of the Connecticut statute as applied to them.

Conclusion

For the sake of brevity we here make reference to our PETITION FOR APPEAL filed herewith and incorporate, by

such reference, each and every assignment of error therein contained and hereby make the same a part hereof to show that substantial federal questions were presented before the Connecticut Supreme Court of Errors.

WHEREFORE the Supreme Court of the United States ought properly to note jurisdiction of this cause for final hearing in accordance with rules of this Court.

Respectfully submitted,

OTTO H. LA MACCHIA,
HAYDEN C. COVINGTON,
Attorneys for Appellants.

APPENDIX A

Copy.

State of Connecticut v. Russell Cantwell et als.

New Haven County, May Term, 1939

Information charging the defendants with the crime of soliciting money for an alleged charitable cause without said cause having been approved by the secretary of the public welfare council in the third count and of breach of the peace in the fifth count, brought to the Court of Common Pleas for New Haven County, where demurrers to said counts were overruled (Pickett, J.) and the issues were tried to the court, Devlin, J.; judgment of guilty and appeal by the defendants. Error in part and new trial ordered.

Olin R. Moyle of the New York bar, and Otto H. La Macchia, with whom, on the brief, was Margaret E. Connors, for the appellants (defendants).

Edwin S. Pickett, prosecuting attorney, with whom was Luke H. Stapleton, for the appellee (the state).

HINMAN, J.:

The defendants were tried and convicted upon the third and fifth counts of an information, the third charging them with violation of Sec. 6294 of the General Statutes as amended by Sec. 860d of the 1937 Supplement, quoted in the footnote,* and the fifth that they "did disturb the pub-

* "No person shall solicit money, services, subscriptions or any valuable thing for any alleged religious, charitable or philanthropic cause, from other than a member of the organization for whose benefit such person is soliciting or within the county in which such person or organization is located unless such cause shall have been approved by the secretary of the public welfare council. Upon application of any person in behalf of such cause, the secretary shall determine whether such cause is a religious one or is a bona fide object of charity or philanthropy and conforms to reasonable standards of efficiency and integrity, and, if he shall so find, shall approve the same and issue to the authority in charge a certificate to that effect. Such certificate may be revoked at any time. Any person violating any provision of this section shall be fined not more than one hundred dollars or imprisoned not more than thirty days or both."

lic tranquillity by certain acts or conduct inciting to violence or tending to provoke or excite others * * * to break the peace." Assignments of error pertaining to correction of the finding having been abandoned, this appeal is to be determined upon the facts as found, without the resort to the evidence which is invited in brief and argument.

The defendants, a father (Newton) and his two minor sons, aged sixteen and eighteen years, are members of a religious organization known as Jehovah's witnesses and possessed credentials attesting that they are ordained ministers to preach the gospel. Each was equipped with a bag containing books and pamphlets in several different languages, a portable phonograph, and a set of records each of which when played introduced and was a sales talk for one of the books. Their mode of operation was to go singly from house to house and ask permission to play one of the records. "They would then ask the prospects to buy the book and if not they would accept any contribution they could make. If the prospect was in a position to do this a pamphlet was left on the condition it would be read." On April 26, 1938, they were working in this manner on Cassius Street, in New Haven, which is a thickly-settled neighborhood where about 90 per cent. of the residents are Roman Catholics. A phonograph record giving a sales talk on one of the books, entitled "Enemies," was played in court and was an attack on the Catholic religion. None of the persons solicited were members of Jehovah's witnesses; the defendants had not secured the permit provided by Sec. 6294 of the General Statutes and the trial court concluded that they were guilty of violating it. They claim that none of their activities come within the scope of this statute but that they consisted only of the distribution of printed books, pamphlets and periodicals.

The finding which we have quoted, while somewhat ambiguous, sufficiently shows that in addition to the sale of the books and the distribution of the pamphlets the defendants were also soliciting contributions or donations of money for an alleged religious cause, and thereby came within the purview of the statute. The claim that the evidence was not sufficient to bring them within the statute is

not now open to consideration in the abandonment of attack upon the finding; in fact the quoted paragraph which we regard as decisive was not attacked by the assignments directed against the finding as made.

The further contention that this statute, as applied to the acts of the defendants, is invalid under Secs. 3, 5 and 6 of Article First of the Connecticut Constitution and the due process clause of the Fourteenth Amendment of the Constitution of the United States, appears to be based upon a claim that the statute, as applied to the defendants and their acts, abridges or denies freedom of religious profession and worship and liberty of speech and of the press. As already indicated, and as is plain from its terms, Sec. 6294 does not apply, and is not sought to be applied in this case, to the dissemination, either by sale or free distribution, of printed matter by the defendants. As the defendants recognize in their brief, the purpose of the statute is to protect the public against imposition in the matter of solicitations of funds purportedly for religious, charitable, or philanthropic causes. This is not, and is not claimed to be, objectionable on constitutional grounds. It is such solicitation which brings the defendants within the statute, not their other and apparently predominant activities in the dissemination of literature. For this reason there is not, as claimed, the constitutional objection which was found as to the application to members of this same organization of ordinances involved in Lovell v. City of Griffin, 303 U. S. 444, 58 Sup. Ct. 666, and Cincinnati v. Mosier, 14 Ohio Opinions 134, the first of which prohibited the distribution of literature of any kind, whether delivered free or sold, without a permit from the city manager, and the second required a license for peddlers selling goods carried by hand. The conviction of violation of Sec. 6294 is supported by the facts found and is not invalid on constitutional grounds.

The fifth count charges a breach of the peace by acts which are within the common-law definition of that offense. 11 C. J. S., p. 818; 2 Brill, Cyclopedia of Criminal Law, p. 1523; 8 Am. Jr., p. 634; 8 R. C. L., Sec. 305, p. 284; 1 Bishop, Criminal Law (9th Ed.) Sec. 539. Section 6194 of the General Statutes does not define the crime known as

breach of the peace, but merely specifies certain ways of committing it. It may be committed in ways other than those so specified. From the time of its original enactment until the revision of 1821 the primary purpose of the statute was to provide for the recovery of damages by a person injured by specified acts directed against him and which are within the scope of those constituting a breach of the peace. General Statutes, Compilation of 1808, p. 545, Revision 1921, p. 162. The specification of such acts logically would be restricted to the types of wrongs which would inflict damage, without design to embrace all acts of breach of the peace. See State v. Farrall, 29 Conn. 72; State v. Christie, 97 Vt. 461, 123 Atl. 849, 34 A. L. R. 577.

The defendants' contention is that the facts are insufficient to establish the offense which is charged. The finding includes the following pertinent facts: Jesse Cantwell stopped John Canley and John Cafferty, both of whom are Catholics, and receiving permission played the phonograph record "Enemies" which attacked that religion and church. on hearing it Canley felt like hitting Cantwell and told him to take his bag and victrola and be on his way. If he had remained he might have received physical violence. Cafferty's mental reaction was to put Jesse off the street and he warned him that he had better get off before something happened to him. Russell Cantwell called at the home of Anna Ri[illegible]by and offered to sell a book known as "Riches". She, already knowing the book and considering it a strong attack against her religion, was angered and complained to the police and "was mad enough to hit him if he did not go away." None of the other witnesses claimed to have any knowledge of the contents of the books other than what they heard from the phonograph record. There was no evidence that the defendants became offensive or entered into any arguments upon refusal to purchase the books.

The charge here is not, as the defendants seem to infer, a "solicitation" to commit crime, as in State v. Avery, 7 Conn. 266 (adultery), and State v. Schleifer, 99 Conn. 432, 121 Atl. 805 (murder, assault, etc.), and in State v. Quinlan, 86 N. J. L. 120, 91 Atl. 111, but provoking or exciting others to break the peace. It is not necessary, as claimed, to show

that other persons were actually provoked to the point of violence or disturbance of the peace. Bishop, Op. Cit., Sec. 539; State v. Farrall, supra; State v. Warner, 34 Conn. 276, 279; Davis v. Burgess, 34 Mich. 514, 517, 20 N. W. 540; Delk v. Commonwealth, 166 Ky. 39, 45, 178 S. W. 1129, L. R. A. 1916B, 1117. Nor is a specific intent to provoke a breach of the peace essential; it is sufficient if the acts are such as tend to produce it. State v. Shelby, 95 Minn. 65, 103 N. W. 725. The doing of acts or the use of language which, under circumstances of which the person is or should be aware, are calculated or likely to provoke another person or other persons to acts of immediate violence may constitute a breach of the peace. St. Louis v. Slupsky, 254 Mo. 309, 318, 162 S. W. 155, 157, 49 L. R. A. (N. S.) 919; Holmes v. State, 135 Ark. 187, 189, 204 S. W. 846; Faulkner v. State, 166 Ga. 645, 665, 114 S. E. 193. The rule is as applicable where, instead of being directly spoken, the objectionable language is communicated, as here, by means of a victrola operated by the person accused, or by banner or placard as in West v. Commonwealth, 208 Ky. 735, 271 S. W. 1079. The effect or tendency of words or conduct depends largely upon the circumstances, and is a question of fact. State v. Moser, 33 Ark. 140. It is apparent from the facts found that the playing for audition by loyal Catholics of a record violently attacking their religion and church could well be found to constitute the offense charged, and they warrant finding the defendant Jesse Cantwell guilty. As was observed in Delk v. Commonwealth, supra, 47, while the right to propagate religious views is not to be denied "one will not be permitted to commit a breach of the peace under the guise of preaching the gospel".

We are unable, however, to discover in the facts found sufficient justification for the conviction of the other two defendants upon this count. Aside from the one incident between Russell Cantwell and Anna Rigby, the most that the finding discloses, as to them in this connection, is a house to house canvassing which is inadequate to constitute the offense charged, as well as apparently subject to the constitutional considerations advanced in Lovell v. City of Griffin, and Cincinnati v. Mosier, supra. As to the Rigby incident,

the resentment entertained by her appears to have been engendered by prior acquaintance with the book of which, so far as the record shows, Cantwell was unaware, rather than anything offensive in the words or manner of his offer to sell it to her. The foregoing considerations also support, as to these two defendants, the assignments of error in the admission and retention of excerpts from the books and pamphlets, but this evidence is extraneous to the facts supporting the charge as against the defendant Jesse Cantwell and could not have been prejudicial to him.

There is no error as to the conviction of all of the defendants on the third count, or that of the defendant Jesse Cantwell on the fifth count; there is error as to the defendants Newton and Russell Cantwell on the fifth count and a new trial is ordered thereon, as to them.

In this opinion the other judges concurred except that Maltbie, C. J., and Brown, J., dissented from so much of it as holds that the finding was sufficient to support the conviction of the accused upon the third count under the statute penalizing the solicitation of money or other valuable thing.

APPENDIX B

SUPREME COURT OF THE UNITED STATES

Nos. 11, 13, 18 and 29—October Term, 1939

CLARA SCHNEIDER, *Petitioner,*

11 *vs.*

THE STATE (Town of Irvington)

On Writ of Certiorari to the Court of Errors and Appeals of the State of New Jersey.

KIM YOUNG, *Appellant,*

13 *vs.*

THE PEOPLE OF THE STATE OF CALIFORNIA

On Appeal from the Appellate Department of the Superior Court of Los Angeles County, California.

HAROLD F. SNYDER, *Petitioner,*

18 *vs.*

CITY OF MILWAUKEE

On Writ of Certiorari to the Supreme Court of the State of Wisconsin.

ELMIRA NICHOLS and PAULINE THOMPSON, *Appellants,*

29 *vs.*

COMMONWEALTH OF MASSACHUSETTS

On Appeal from the Superior Court, County of Worcester, Commonwealth of Massachusetts.

The leading case here is about one of **Jehovah's witnesses.** She went from door to door leaving with interested persons literature explaining the purposes of Almighty God as written in the Bible. From some of such persons she accepted contributions given to aid in printing and distributing more like literature. She was accused and convicted as a violator of a canvassing ordinance. She purposely had not applied to police for a permit, for she considered herself as sent by the Most High God, JEHOVAH, to do His work under Christ Jesus, and that therefore to apply to any creature for a permit would be an act of disobedience to her Creator. Her wrongful conviction was reversed by the nation's highest court as an unlawful encroachment upon rights safeguarded for every inhabitant of the United States by its Constitution, as defined in an earlier case of another of Jehovah's witnesses (Lovell v. City of Griffin, 303 U. S. 444) and in the following momentous opinion.

[November 22, 1939]

Mr. Justice ROBERTS delivered the opinion of the Court.

Four cases are here, each of which presents the question of whether regulations embodied in a municipal ordinance abridge the freedom of speech and of the press secured

against state invasion by the Fourteenth Amendment of the Constitution.[1]

No. 13

The Municipal Code of the City of Los Angeles, 1936, provides:

"Sec. 28.00. 'Hand-Bill' shall mean any hand-bill, dodger, commercial advertising circular, folder, booklet, letter, card, pamphlet, sheet, poster, sticker, banner, notice, or other written, printed or painted matter calculated to attract attention of the public."

"Sec. 28.01. No person shall distribute any hand-bill to or among pedestrians along or upon any street, sidewalk or park, or to passengers on any street car, or throw, place or attach any hand-bill in, to or upon any automobile or other vehicle."

The appellant was charged in the Municipal Court with a violation of Sec. 28.01. Upon his trial it was proved that he distributed handbills to pedestrians on a public sidewalk and had more than three hundred in his possession for that purpose. Judgment of conviction was entered and sentence imposed: The Superior Court of Los Angeles County affirmed the judgment.[2] That court being the highest court in the State authorized to pass upon such a case, an appeal to this court was allowed.

The handbill which the appellant was distributing bore a notice of a meeting to be held under the auspices of "Friends Lincoln Brigade" at which speakers would discuss the war in Spain.

The court below sustained the validity of the ordinance on the ground that experience shows littering of the streets results from the indiscriminate distribution of handbills.[3] It

[1] On account of the importance of the question we granted certiorari in two of the cases, and noted jurisdiction in the others.

[2] 3 Calif. App. Supp. 62; 85 Pac. (2d) 231.

[3] On the hand-bill were the words "Admission 25¢ and 50¢". The Superior Court adverted to these and said: "Whatever traffic in ideas the Friends Lincoln Brigade may have planned for the meeting, the cards themselves seem to fall within the classification of commercial advertising rather than the expression of one's views. But if this be so, our conclusion is not thereby changed."

held that the right of free expression is not absolute but subject to reasonable regulation and that the ordinance does not transgress the bounds of reasonableness. *Lovell* v. *City of Griffin*, 303 U. S. 444, was distinguished on the ground that the ordinance there in question prohibited distribution anywhere within the city while the one involved forbids distribution in a very limited number of places.

No. 18

An ordinance of the City of Milwaukee, Wisconsin, provides:

"It is hereby made unlawful for any person * * * to circulate or distribute any circular, hand-bills, cards, posters, dodgers, or other printed or advertising matter * * * in or upon any sidewalk, street, alley, wharf, boat landing, dock or other public place, park or ground within the City of Milwaukee." * * *

The petitioner, who was acting as a picket, stood in the street in front of a meat market and distributed to passing pedestrians handbills which pertained to a labor dispute with the meat market, set forth the position of organized labor with respect to the market, and asked citizens to refrain from patronizing it. Some of the bills were thrown in the street by the persons to whom they were given and it resulted that many of the papers lay in the gutter and in the street. The police officers who arrested the petitioner and charged him with a violation of the ordinance did not arrest any of those who received the bills and threw them away. The testimony was that the action of the officers accorded with a policy of the police department in enforcement of the ordinance to the effect that, when such distribution resulted in littering of the streets, the one who was the cause of the littering, that is, he who passed out the bills, was arrested rather than those who received them and afterwards threw them away. The Milwaukee County court found the petitioner guilty and fined him. On appeal the judgment was affirmed by the Supreme Court.[4]

[4] — Wis. —; 283 N. W. 301.

The court held that the purpose of the ordinance was to prevent an unsightly, untidy, and offensive condition of the sidewalks. It distinguished *Lovell* v. *City of Griffin, supra*, on the ground that the ordinance there considered manifestly was not aimed at prevention of littering of the streets. The court approved the administrative construction of the ordinance by the police officials and felt that this construction sustained its validity. The court said: "Unless and until delivery of the hand-bills was shown to result in a littering of the streets their distribution was not interfered with."

No. 29

An ordinance of the City of Worcester, Massachusetts, provides:

"No person shall distribute in, or place upon any street or way, any placard, handbill, flyer, poster, advertisement or paper of any description." * * *

The appellants distributed in a street leaflets announcing a protest meeting in connection with the administration of State unemployment insurance. They did not throw any of the leaflets on the sidewalk or scatter them. Some of those to whom the leaflets were handed threw them on the sidewalk and the street, with the result that some thirty were lying about.

The appellants were arrested and charged with a violation of the ordinance. The Superior Court of Worcester County rendered a judgment of conviction and imposed sentence. The Supreme Judicial Court overruled exceptions.[5] That court held the ordinance a valid regulation of the use of the streets and sought thus to distinguish it from the one involved in *Lovell* v. *City of Griffin, supra*, which the court said was not such a regulation. Referring to the ordinance the court said: "It interferes in no way with the publication of anything in the city of Worcester, except only that it excludes the public streets and ways from the places available for free distribution. It leaves open for such distribution all other places in the city, public and private."

[5] Mass. Adv. 1938, 1969; 18 N. E. (2d) 166.

No. 11

An ordinance of the Town of Irvington, New Jersey, provides: "No person except as in this ordinance provided shall canvass, solicit, distribute circulars, or other matter, or call from house to house in the Town of Irvington without first having reported to and received a written permit from the Chief of Police or the officer in charge of Police Headquarters." It further enacts that a permit to canvass shall specify the number of hours or days it will be in effect; that the canvasser must make an application giving his name, address, age, height, weight, place of birth, whether or not previously arrested or convicted of crime, by whom employed, address of employer, clothing worn, and description of project for which he is canvassing; that each applicant shall be fingerprinted and photographed; that the Chief of Police shall refuse a permit in all cases where the application, or further investigation made at the officer's discretion, shows that the canvasser is not of good character or is canvassing for a project not free from fraud; that canvassing may only be done between 9 A. M. and 5 P. M.; that the canvasser must furnish a photograph of himself which is to be attached to the permit; that the permittee must exhibit the permit to any police officer or other person upon request, must be courteous to all persons in canvassing, must not importune or annoy the town's inhabitants or conduct himself in an unlawful manner and must, at the expiration of the permit, surrender it at police headquarters. Persons delivering goods, merchandise, or other articles in the regular course of business to the premises of persons ordering, or entitled to receive the same, are exempted from the operation of the ordinance. Violation is punishable by fine or imprisonment.

The petitioner was arrested and charged with canvassing without a permit. The proofs show that she is a member of the Watch Tower Bible and Tract Society and, as such, certified by the society to be one of "Jehovah's witnesses". In this capacity she called from house to house in the town at all hours of the day and night and showed to the occupants a so called testimony and identification card signed by the society. The card stated that she would leave some

booklets discussing problems affecting the person interviewed; and that, by contributing a small sum, that person would make possible the printing of more booklets which could be placed in the hands of others. The card certified that the petitioner was an ordained minister sent forth by the society, which is organized to preach the gospel of God's kingdom, and cited passages from the Bible with respect to the obligation so to preach. The petitioner left, or offered to leave, the books or booklets with the occupants of the houses visited. She did not apply for or obtain a permit pursuant to the ordinance because she conscientiously believed that so to do would be an act of disobedience to the command of Almighty God.

The petitioner was convicted in the Recorder's Court. The Court of Common Peas affirmed the judgment. On a further appeal the Supreme Court affirmed.[6] The Court of Errors and Appeals affirmed the judgment of the Supreme Court.[7]

The Supreme Court held that the petitioner's conduct amounted to the solicitation and acceptance of money contributions without a permit, and held the ordinance prohibiting such action a valid regulation, aimed at protecting occupants and others from disturbance and annoyance and preventing unknown strangers from visiting houses by day and night. It overruled the petitioner's contention that the measure denies or unreasonably restricts freedom of speech or freedom of the press. The Court of Errors and Appeals thought *Lovell* v. *City of Griffin, supra*, not controlling, since the ordinance in that case prohibited all distribution of printed matter and was not limited to ways which might be regarded as consistent with the maintenance of public order or as involving disorderly conduct, molestation of inhabiants, or misuse or littering of the streets, whereas the ordinance here involved is aimed at canvassing or soliciting, subjects not embraced in that condemned in the *Lovell* case. The Court said: "A municipality may protect its citizens against fraudulent solicitation and, when it enacts an ordinance to do so, all persons are required to abide thereby.

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[6] 120 N. J. Law, 460.
[7] 121 N. J. Law, 542.

The ordinance in question was evidently designed for that purpose." * * *

The freedom of speech and of the press secured by the First Amendment against abridgment by the United States is similarly secured to all persons by the Fourteenth against abridgment by a state.[8]

Although a municipality may enact regulation in the interest of the public safety, health, welfare or convenience, these may not abridge the individual liberties secured by the Constitution to those who wish to speak, write, print or circulate information or opinion.

Municipal authorities, as trustees for the public, have the duty to keep their communities' streets open and available for movement of people and property, the primary purpose to which the streets are dedicated. So long as legislation to this end does not abridge the constitutional liberty of one rightfully upon the street to impart information through speech or the distribution of literature, it may lawfully regulate the conduct of those using the streets. For example, a person could not exercise this liberty by taking his stand in the middle of a crowded street, contrary to traffic regulations, and maintain his position to the stoppage of all traffic; a group of distributors could not insist upon a constitutional right to form a cordon across the street and to allow no pedestrian to pass who did not accept a tendered leaflet; nor does the guarantee of freedom of speech or of the press deprive a municipality of power to enact regulations against throwing literature broadcast in the streets. Prohibition of such conduct would not abridge the constitutional liberty since such activity bears no neces-

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[8] Gitlow *v.* New York, 268 U. S. 652; Whitney *v.* California, 274 U. S. 357; Stromberg *v.* California, 283 U. S. 359; Grosjean *v.* American Press Co., 297 U. S. 233; DeJonge *v.* Oregon, 299 U. S. 353; Herndon *v.* Lowry, 301 U. S. 242; Lovell *v.* Griffin, 303 U. S. 444. There is no averment or proof in any of the cases that the appellants or petitioners are citizens of the United States, and in the *Young* case, No. 13, the applicable provisions of the municipal code were challenged on the sole ground that they infringed the due process clause of the Fourteenth Amendment. Cf. New York ex rel. Cohn *v.* Graves, 300 U. S. 308, 317; Northwestern Bell Telephone Co. *v.* Nebraska State Ry. Comm., 297 U. S. 471 at 473.

sary relationship to the freedom to speak, write, print or distribute information or opinion.

This court has characterized the freedom of speech and that of the press as fundamental personal rights and liberties.[9] The phrase is not an empty one and was not lightly used. It reflects the belief of the framers of the Constitution that *exercise of the rights* lies at the foundation of free government by free men. It stresses, as do many opinions of this court, the importance of preventing the restriction of enjoyment of these liberties.

In every case, therefore, where legislative abridgment of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at *other* personal activities, but be insufficient to justify such as diminishes the *exercise of rights* so vital to the maintenance of democratic institutions. And so, as cases arise, the delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the *free enjoyment of the rights.*

In *Lovell* v. *City of Griffin, supra,* this court held void an ordinance which forbade the distribution by hand or otherwise of literature of any kind without written permission from the city manager. The opinion pointed out that the ordinance was not limited to obscene and immoral literature or that which advocated unlawful conduct, placed no limit on the privilege of distribution in the interest of public order, was not aimed to prevent molestation of inhabitants or misuse or littering of streets, and was without limitation as to time or place of distribution. The court said that, whatever the motive, the ordinance was bad because it imposed penalties for the distribution of pamphlets, which had become historical weapons in the defense of liberty, by subjecting such distribution to license and censorship; and that the ordinance was void on its face, because it abridged the freedom of the press. Similarly in *C. I. O.* v.

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[9] Grosjean v. American Press Co., *supra,* p. 244; DeJonge v. Oregon, *supra,* p. 364; Lovell v. City of Griffin, *supra,* p. 450.

Hague, — U. S. —, an ordinance was held void on its face because it provided for previous administrative censorship of the exercise of the right of speech and assembly in appropriate public places.

The Los Angeles, the Milwaukee, and the Worcester ordinances under review do not purport to license distribution but all of them absolutely prohibit it in the streets and, one of them, in other public places as well.

The motive of the legislation under attack in Numbers 13, 18 and 29 is held by the courts below to be the prevention of littering of the streets and, although the alleged offenders were not charged with themselves scattering paper in the streets, their convictions were sustained upon the theory that distribution by them encouraged or resulted in such littering. We are of opinion that the purpose to keep the streets clean and of good appearance is insufficient to justify an ordinance which prohibits a person rightfully on a public street from handing literature to one willing to receive it. Any burden imposed upon the city authorities in cleaning and caring for the streets as an indirect consequence of such distribution results from the constitutional protection of the freedom of speech and press. This constitutional protection does not deprive a city of all power to prevent street littering. There are obvious methods of preventing littering. Amongst these is the punishment of those who actually throw papers on the streets.

It is argued that the circumstance that in the actual enforcement of the Milwaukee ordinance the distributor is arrested only if those who receive the literature throw it in the streets, renders it valid. But, even as thus construed, the ordinance cannot be enforced without unconstitutionally abridging the liberty of free speech. As we have pointed out, the public convenience in respect of cleanliness of the streets does not justify an exertion of the police power which invades the free communication of information and opinion secured by the Constitution.

It is suggested that the Los Angeles and Worcester ordinances are valid because their operation is limited to streets and alleys and leaves persons free to distribute printed matter in other public places. But, as we have said, the

streets are natural and proper places for the dissemination of information and opinion; and one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place.

While it affects others, the Irvington ordinance drawn in question in No. 11, as construed below, *affects all those, who, like the petitioner, desire to impart information and opinion to citizens at their homes.* If it covers the petitioner's activities it equally applies to one who wishes to present his views on political, social or economic questions. The ordinance is not limited to those who canvass for private profit; nor is it merely the common type of ordinance requiring some form of registration or license of hawkers, or peddlers. It is not a general ordinance to prohibit trespassing. *It bans unlicensed communication of any views or the advocacy of any cause from door to door,* and permits canvassing only subject to the power of a police officer to determine, as a censor, what literature may be distributed from house to house and who may distribute it. The *applicant must submit to that officer's judgment* evidence as to his good character and as to the absence of fraud in the "project" he proposes to promote or the literature he intends to distribute, and *must undergo a burdensome and inquisitorial examination,* including photographing and fingerprinting. In the end, *his liberty to communicate with the residents of the town at their homes depends upon the exercise of the officer's discretion.*

As said in *Lovell* v. *City of Griffin, supra,* pamphlets have proved most effective instruments in the dissemination of opinion. And perhaps the most effective way of bringing them to the notice of individuals is their distribution at the homes of the people. On this method of communication the ordinance imposes censorship, abuse of which engendered the struggle in England which eventuated in the establishment of the doctrine of the freedom of the press embodied in our Constitution. To require a censorship through license which makes impossible the free and unhampered distribution of pamphlets strikes at the very heart of the constitutional guarantees.

Conceding that fraudulent appeals may be made in the name of charity and religion, we hold a municipality cannot, for this reason, require all who wish to disseminate ideas to present them first to police authorities for their consideration and approval, with a discretion in the police to say some ideas may, while others may not, be carried to the homes of citizens; some persons may, while others may not, disseminate information from house to house. Frauds may be denounced as offenses and punished by law. Trespasses may similarly be forbidden. If it is said that these means are less efficient and convenient than bestowal of power on police authorities to decide what information may be disseminated from house to house, and who may impart the information, the answer is that considerations of this sort do not empower a municipality to abridge freedom of speech and press.

We are not to be taken as holding that commercial soliciting and canvassing may not be subjected to such regulation as the ordinance requires. Nor do we hold that the town may not fix reasonable hours when canvassing may be done by persons having such objects as the petitioner. Doubtless there are other features of such activities which may be regulated in the public interest without prior licensing or other invasion of constitutional liberty. We do hold, however, that the ordinance in question, *as applied to the petitioner's conduct*, is void, and she cannot be punished for *acting without a permit*.

The judgment in each case is reversed and the causes are remanded for further proceedings not inconsistent with this opinion.

So ordered.

Mr. Justice McReynolds is of opinion that the judgment in each case should be affirmed.

A true copy. Test:

_____,

Clerk, Supreme Court, U. S.